

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, 2005

DAVID JAMES WELLS,

**

Appellant,

**

vs.

** CASE NO. 3D04-2888

THE OFFICE OF THE PUBLIC
DEFENDER, etc., et al.,

**

Appellees.

** LOWER
TRIBUNAL NO. 83-15080 &
04-28694

Opinion filed July 27, 2005.

An Appeal from the Circuit Court for Miami-Dade County,
David H. Young, Judge.

David James Wells, in proper person.

Charles J. Crist, Jr., Attorney General, and Richard L.
Polin, Assistant Attorney General, for appellees.

Before GREEN, WELLS, and ROTHENBERG, JJ.

ROTHENBERG, Judge.

David James Wells appeals the denial of his petition for
writ of mandamus, seeking to compel Alvin E. Entin, who acted as

his specially appointed public defender in 1985, to provide Wells with his trial transcripts and appellate records. We affirm.

Wells relies on Bermed v. Tacher, 565 So. 2d 833 (Fla. 3d DCA 1990) and Dennis v. Brummer, 479 So. 2d 857 (Fla. 3d DCA 1985). In those cases, the petition sought to compel either a public defender or a special assistant public defender to produce documents and transcripts relating to the petitioner's case. In both cases, there appeared to be no impediment to granting the relief sought, and we granted the petition for writ of mandamus. In the instant case, however, there is an impediment to granting the relief sought. Specifically, specially appointed public defender Entin does not recall Mr. Wells or his case and does not have his file in storage, noting that this is a twenty-year old case. Therefore, Mr. Entin has nothing to provide to Wells. He complied with Wells' request for the files as best he could by informing him of the fact that he does not have the files. Because Mr. Entin cannot provide that which he does not have, the order denying the petition for writ of mandamus is affirmed.

Affirmed.